

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Hypertherm, Inc.

v.

Civil No. 05-cv-373-JD

American Torch Tip Company

O R D E R

Hypertherm, Inc. moved for summary judgment that American Torch Tip Company's ("ATTC") replacement parts infringe five of Hypertherm's patents, United States Patents No. 7,019,255 (" '255 patent"), No. 6,946,617 (" '617 patent"), No. 6,207,923 (" '923 patent"), No. 5,977,510 (" '510 patent"), and No. 5,310,988 (" '988 patent"). ATTC moved for summary judgment of non-infringement of the '923, '255, '510, and '988 patents. ATTC's motions also address invalidity of the '255, '617, and '988 patents and marking of the '510 patent.

After those motions were filed, the court on July 24, 2008, granted Hypertherm's motion for summary judgment (document no. 133), in part, and directed the parties to file a joint notice specifying those parts of pending motions that were resolved or changed by the order. On August 6, 2008, the court granted Hypertherm's motion to strike (document no. 219) certain evidence ATTC submitted in support of its defenses. Because the parties disagreed about the effect of the July 24 order, while ATTC's

motion for reconsideration was pending, their joint notice in response to the July 24 order was not helpful.

On September 11, 2008, the court granted Hypertherm's motion for summary judgment and denied ATTC's motion for summary judgment on ATTC's affirmative defenses of laches, estoppel, acquiescence, waiver, and unclean hands. The court denied ATTC's motion for reconsideration of the August 6 order. The court also denied ATTC's motion for reconsideration of the July 24 order, except that the order was amended to incorporate certain corrections filed by Hypertherm on March 11, 2008. ATTC's motion for reconsideration of the September 11 order was denied on November 17, 2008.

With the motions for reconsideration decided, the court ordered the parties to file a joint notice "clearly specifying the parts of pending motions that have been resolved or changed in any respect by the July 24, 2008, order." In response, the parties filed a notice that listed two of the pending motions as not resolved or changed and listed four motions as resolved or changed. The notice did not specify which parts of the motions had been resolved or changed. Therefore, the parties failed to comply with the court's order. Since that time, the court has issued additional orders on pending motions, which may affect pending motions.

Trial is scheduled on the infringement claims in February of 2009. Therefore, the pending motions that could affect those claims and any remaining defenses should be addressed as expeditiously as possible.

Conclusion

For the foregoing reasons, the parties' joint notice filed on November 26, 2008, is rejected because the parties failed to comply with the court's order. **On or before January 12, 2009,** the parties shall file a joint notice specifying in detail which parts of the pending motions have now been resolved or changed by the orders that have been issued to date. If the parties cannot agree as to the effect of the court's orders, they shall file separate notices with thorough explanations for their disagreement and for their reasonable view of the effect of the court's orders. Disagreement with an order is not a reasonable basis to avoid its effect on other pending motions.

Any response that fails to comply with this order or fails to provide detail as to the parts of pending motions that have been resolved or changed by intervening orders may result in

sanctions, which could include dismissal of affected claims or defenses.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

December 29, 2009

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